

Issue: Unreported/Underreported Income (Fraud Application)

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which indicates that for the year ending December 31, 1989, this taxpayer had adjusted gross income (hereinafter referred to as "AGI") of \$58,420.00, with a net income of \$57,420.00. (Dept. Ex. No. 1).

2. The taxpayers failed to file an Illinois Income Tax return for the taxable year. (Dept. Ex. No. 1).

3. The taxpayers filed their Federal Income Tax return for the taxable year from an Illinois address. (Taxpayer's No. 2).

4. The taxpayers filed a timely protest to the Notice, but did not request a formal hearing. (Taxpayer's Ex. No. 1).

5. During the course of these proceedings, on March 28, 1995, the taxpayers filed the 1989 IL-1040 with W-2 statements.

6. The taxpayers claim to have lived in Illinois for eight months; they consider themselves to be part-year residents. (1989 IL-1040).

7. The taxpayers reported an AGI of \$58,420.00, with a net tax due of \$726.00. Per W-2s, the AGI is composed of \$38,947.00 and \$19,473.00 wages earned while a resident of Illinois and California, respectively.

8. Pursuant to an analysis of the 1989 IL-1040 and documents submitted, it was determined that the taxpayers are entitled to three exemptions, rather than the one they claimed. Therefore, the net income was corrected to \$36,847.00, with a corrected total tax due of \$1,016.00.

9. The Department disallowed the taxpayers' claimed tax credit of \$277.00 paid to California since this tax paid relates to the California income of \$19,473.00 which was not taxed in Illinois.

10. Section 1001 penalties were assessed because the income tax return was not filed on time.

11. Section 1005 penalties were assessed because the entire tax liability was not paid by the due date.

12. Section 804 penalties were assessed because the taxpayers' failure to timely pay the estimated payments.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et. seq., provides in pertinent part:

904 Deficiencies and Overpayments.

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(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. 35 ILCS 5/904(b).

In the letter of protest, the taxpayers chose not to have the matter heard by hearing. 35 ILCS 908(a). During the course of these administrative proceedings, the taxpayers filed their IL-1040 return for the taxpayer year. Pursuant to a review thereof by the Department, it was determined that there is a net tax due of \$431.00, with interest and penalties due, also. Specifically, the Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides that penalties be imposed for late filing of any income tax return, failure to pay the entire tax liability by the date of the return and failure to make the required estimated tax payments. (35 ILCS 5/1001, 1005, 804).

Therefore, based upon the evidence of record, it is my recommendation that the Notice of Deficiency issued in this cause be finalized pursuant to the adjustments made by the Department.

Administrative Law Judge